

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 21, 2006, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Michael Cornelius, Gerry Krieser, Roger Larson, Mary Strand, Lynn Sunderman and Tommy Taylor; (Dick Esseks absent). Marvin Krout, Ray Hill, Brian Will, Mike DeKalb, Tom Cajka, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held June 7, 2006. Motion for approval made by Strand, seconded by Carroll and carried 8-0: Carlson, Carroll, Cornelius, Krieser, Larson Sunderman, Strand and Taylor voting 'yes'; Esseks absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

June 21, 2006

Members present: Carlson, Carroll, Cornelius, Krieser, Larson, Strand, Sunderman and Taylor; Esseks absent.

The Consent Agenda consisted of the following items: **COUNTY CHANGE OF ZONE NO. 05080, CHANGE OF ZONE NO. 06036 AND SPECIAL PERMIT NO. 06037.**

Ex Parte Communications: None.

Item No. 1.1, County Change of Zone No. 05080 was removed from the Consent Agenda and scheduled for separate public hearing. Carroll moved to approve the remaining Consent Agenda, seconded by Strand and carried 8-0: Carlson, Carroll, Cornelius, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'; Esseks absent.

COUNTY CHANGE OF ZONE NO. 05080
FROM AG AGRICULTURAL DISTRICT TO
AGR AGRICULTURAL RESIDENTIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT S.W. 29TH STREET AND MARTELL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 21, 2006

Members present: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson; Esseks absent.

Staff recommendation: Approval.

Ex Parte Communications: None

This application was removed from the Consent Agenda and had separate public hearing due to receipt of a petition in opposition.

Additional information submitted for the record: Mike DeKalb of Planning staff submitted a petition in opposition signed by 34 individuals. Their addresses were not provided.

Staff presentation: Mike DeKalb explained that this is a request for change from AG to AGR on a 21-acre parcel immediately north of the town of Martell, 7.9 acres of which are in the Village of Sprague jurisdiction and 13 acres of which are in the Lancaster County jurisdiction. The staff recommendation of approval is based on information that the Sprague Board has approved the AGR zoning for their area of jurisdiction. The unincorporated Village of Martell is in the Sprague jurisdiction.

Proponents

1. Matt Langston of ESP presented the proposal on behalf of the owner. It is adjacent to the unincorporated Village of Martell. He believes that it will be an asset to the community as they are donating an easement so that firefighters that will be living there can get to the fire station. Langston advised that he just learned yesterday that the approval of the change of zone by the Village of Sprague is conditional upon approval by the Lancaster County Board; however, they do like the idea of this addition to the community. The preliminary plat shows 4 lots. The AGR zoning would allow five.

Strand asked the applicant to address the argument contained in the petition in opposition stating that the owner has not completed requirements. Langston did not know what requirements the petition refers to. He did not see the requirements on the conditional approval from Sprague. But, from what he can tell, the individuals are just not happy about houses being built in this area.

Carlson clarified that there will be four residential lots. Langston concurred that the concept plan shows four lots and one outlot.

Opposition

1. Carolyn Camacho, landowner in Martell, testified in opposition. She stated that “this disagreement” has been going on for about eight years. Mr. Bentzinger fluctuates between wanting to put up low income apartments so that firemen can live in them and 3-acre parcels so that people can move in. He wants to increase the lagoon size in Martell, which now takes care of seven trailers inadequately. At the meeting in Sprague a year ago, he wanted to get these houses put in with a large lagoon in between Martell and Sprague, in wetlands, which could not actually be a valid answer. She does not know of any landowner that is in favor of this proposal. She circulated the petition, but she did not have time to catch all of the landowners. The petition represents a few of the landowners that are aware of the project and they are in opposition. Don Mitchell and Marilyn Palmer of Sprague who are on the Sprague Board, were at the meeting a year ago and they both indicated that Mr. Bentzinger has not followed through on anything that they asked him to do. She believes that 99% of the landowners protest this change of zone.

Staff questions

Carroll noted that the plan in the Planning Commission packets shows five lots, the applicant says it is four, and #9 of the staff analysis talks about two lots being permitted under the existing zoning. DeKalb responded, stating that this has been a long process with many different proposals. First, there was a change of zone and community unit plan application that was put on pending for many months; the applicant asked for the change of zone to move forward; the concept plan is their last version based on the pending application; the layout and density was in flux based on Sprague's 5-acre minimum being changed to 3-acre minimum. The bottom line is, if the change of zone is granted, any plat will be required to have approval by both Sprague and Lancaster County, and will have to meet the lot sizes of both jurisdictions.

DeKalb further advised that the applicant has discussed the idea of putting in a community lagoon and sewer system in Martell. That has been a point of discussion that has not been accomplished but it is a separate issue from this change of zone.

DeKalb further clarified that the information provided by Sprague was that Sprague had approved the change of zone, subject to approval by the Lancaster County Board. One lot would be in the Sprague jurisdiction. The change of zone will give them one more lot. Their total density goes from one lot total to four or five lots with this change of zone.

Carlson sought confirmation that the “additional requirements” referred to in the petition in opposition were in the past. DeKalb understands that the conditions put forward in the

discussion between Sprague and Mr. Bentzinger are in relation to a separate proposal relative to Martell itself, i.e. the trailer court and community sewer system for that project.

Response by the Applicant

Langston advised that Mr. Bentzinger is looking at the possibility of developing other areas in Martell and that may be some of the confusion. This project will have individual lagoons in the worst case scenario, if they cannot put in lateral fields. Mr. Bentzinger is not proposing any apartments. These will be single family dwelling units. The Village of Sprague still has to approve the special permit, so they still have a voice in this. He does not see any reason why that should be a concern at this point.

Langston confirmed that the owner will be requesting four residential lots as shown today.

ACTION BY PLANNING COMMISSION:

June 21, 2006

Strand moved approval, seconded by Carroll.

Carlson commented that typically, with areas not shown as acreage on the Comprehensive Plan, he would be hesitant, but he believes it should be left to the local township rules.

Motion for approval carried 7-1: Cornelius, Taylor, Strand, Carroll, Sunderman, Krieser and Carlson voting 'yes'; Larson voting 'no'; Esseks absent. This is a recommendation to the Lancaster County Board.

**CHANGE OF ZONE NO. 06036,
FROM COUNTY I INDUSTRIAL TO
CITY I-1 INDUSTRIAL,
ON PROPERTY GENERALLY LOCATED
AT N. 134TH AND "O" STREETS.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 21, 2006

Members present: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson; Esseks absent.

Staff recommendation: Approval.

Ex Parte Communications: None

This application was removed from the Consent Agenda and had separate public hearing at the request of Bob Creager.

Staff presentation: Greg Czaplewski of Planning staff explained that this application is really just a technicality. The property is now in the city as a result of some recent annexations. Therefore, it is necessary to change the zoning from a county to a city zoning

designation. In this case, there is a spot of industrial zoning. County industrial zoning is different than the city, so to bring this property within the city zoning ordinance, it needs to be changed to a city designation.

Proponents

1. **Bob Creager**, 1630 K Street, appeared on behalf of **Ron Skoda and Skoda Development Company**, the owner of part of the property in question. The owner is not opposed to the zone change. His client found this rare piece of property on "O" Street that has been zoned industrial since the 1950's. He has started commercial development with mini-warehouses and a house, with another structure intended to be put into a condominium regime (for offices). The report says that the existing uses would be allowed by law, and the designation is close enough that the owner should not be limited in any other fashion. There are recorded proposals to build on this property and Creager wants to make sure that none of these changes will frustrate any existing or immediately planned uses of the property. He does not know where to get this assurance. The report seems to suggest that there will be no change in substance as to how the property can be used. There was no testimony in opposition.

Staff questions

Czaplewski clarified that the parcel right at the corner is the manufacturing facility that has existed for a number of years; the parcel on the right is the Skoda property. A couple of weeks ago this application was deferred because the staff was initially proposing a change to H-3, which would be more restrictive than the I-1. Upon further review, it was determined that the existing mini-warehousing and some of their plans for future commercial would not work with H-3 so the staff recommendation was revised to I-1, which appears to accommodate what is there as long as they are planning to build what has been shown at the Building & Safety Department. I-1 is the most liberal district in the city. He does not believe it is going to cause this owner any future problems.

Czaplewski also confirmed that a bar or restaurant is an allowed use by right in the I-1 district. There would need to be a special permit for any alcohol sales.

Carlson inquired whether condominiums are allowed in County I zoning. Czaplewski explained that the condo regime being discussed is more a legal issue than something the staff deals with. In essence, it accomplishes subdivision without going through subdivision. It allows them to sell and own different pieces of property without actually subdividing into lots. He does not believe it is a residential regime, but for office. If it became residential in the future, it would need to be changed to a residential district.

ACTION BY PLANNING COMMISSION:

June 21, 2006

Carroll moved approval, seconded by Strand and carried 8-0: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson voting 'yes'; Esseks absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 06039
A TEXT AMENDMENT TO THE ZONING
ORDINANCE TO ALLOW OUTDOOR DINING
WHEN ASSOCIATED WITH A RESTAURANT
IN CERTAIN ZONING DISTRICTS.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 21, 2006

Members present: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson; Esseks absent.

Staff recommendation: Approval, as revised.

Ex Parte Communications: None

Staff presentation: Tom Cajka of Planning staff submitted an amendment to add B-4 to the revisions for Section 27.71.100, to allow patios and paved terraces in the B-4 district as well.

Cajka explained that the purpose of this legislation is to allow outdoor dining in the front yard setback when associated with a restaurant. Currently, outdoor dining is allowed, but not within the setback area.

The definition of outdoor dining states:

Outdoor dining shall mean an open area for dining in a required front yard when associated with a restaurant in which tables and seats are covered or uncovered by individual umbrellas or canopies (no tents or other types of temporary structures).

This would be similar to what is allowed today under the sidewalk cafés, which are allowed in the B districts, the major difference being you can do sidewalk cafés in public right-of-way. This would not allow outdoor dining in public right-of-way but rather on the private property and within the front yard setback. It would be allowed in all districts that allow restaurants.

Cajka further explained that some of the other text changes are to allow patio and paved terraces to extend further into the front yard. Some districts are added where canopies in front yards could be allowed to match where outdoor dining is allowed.

The other part of this text change has to do with a clean-up item in reducing the front yard setback in commercial districts to 20 feet, to include the O-3 district, which was previously inadvertently omitted.

Strand noticed that heating systems are not allowed, and she wondered whether that included the portable propane heaters frequently used for outdoor dining on cooler spring and fall evenings. Cajka believes that restriction only applies when a porch is totally enclosed. That restriction has been in the ordinance for quite some time and is not being amended by this action. It applies to the residential districts. If you have a porch in a residential district, it can encroach into the front yard, but if you enclose it you cannot heat it. If it is within the building lines, it could be heated. You can heat an enclosed porch in the back of the house.

Carlson referred to the balconies or paved terraces portion. He does not believe the language restricts it to outdoor dining. Cajka stated that the balconies were not changed. The intent was to have patios and paved terraces allowed in the same area as outdoor dining. He agreed that the language does not limit it to just outdoor dining. Carlson wondered whether there might be other uses than outdoor dining. Cajka explained that one of the reasons was that the older districts already allow parking lots and driving aisles so the staff did not see this having any negative effect, i.e. seeing tables and chairs rather than a parking lot.

Larson inquired about back yard setbacks and side yard setbacks. Cajka advised that this only applies to the front yard. The idea is that we want to put pedestrian activity along the streets. This would be an amenity to the streetscape.

Support

1. Monte Crandon(sp), a bistro owner in Edgewood at 5520 S. 56th Street, testified in support, particularly as to the amendment on parking. His is an independent establishment and they have been unable to have outside dining because of the parking restrictions. The outdoor dining is a drawing and impulse factor to any type of restaurant.

2. Coby Mach testified in support on behalf of the Board of Directors for **LIBA**. The restaurant business slows down during the summer months and these changes should be viewed as an opportunity to create alternative outdoor activity to enhance the dining atmosphere. It may provide economic benefit and could possibly have an impact on tax revenues collected by the city. This is pro-business and a positive community change.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 21, 2006

Carroll moved approval, as revised by staff today, seconded by Strand and carried 8-0: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson voting 'yes'; Esseks absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 06023;
MISCELLANEOUS NO. 06005;
COUNTY CHANGE OF ZONE NO. 06024;
and COUNTY MISCELLANEOUS NO. 06023,
TO INCREASE FILING FEES FOR
CITY AND COUNTY ZONING AND SUBDIVISION
APPLICATIONS.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 21, 2006

Members present: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson; Esseks absent.

Staff recommendation: Approval, as revised.

Ex Parte Communications: None

Additional information submitted for the record: Ray Hill of Planning staff submitted a memo from the Parks Department outlining how they have determined the cost for the street tree maintenance fee that has been added to the application for final plats.

Staff presentation: Ray Hill of Planning staff also corrected the staff report to indicate that the street maintenance fee should be \$4.00 per lot, as opposed to \$4.00 per tree.

Hill explained the proposal, stating that the purpose of this legislation is to balance the amount paid for planning services as compared to the taxpayers' portion of the cost of planning review. Basically, the staff does not believe that the increase in fees will have an impact on the cost of housing and development in this city, and it will somewhat reduce the burden placed on the individual general taxpayer.

These fees do not even come close to covering the cost of administering or processing the applications. There are a lot of different departments involved in the review process.

One of the significant changes made is the base and lot fee for community unit plans, use permits and PUD's. A year or two ago, the ordinance was changed to eliminate the preliminary plat in processing special permits, community unit plans and planned unit developments. In doing so, it did have an impact upon the amount of fees that were being

collected. It was appropriate to streamline the process by eliminating the preliminary plat process, but there are still costs involved in the review, so those adjustments are being made in this request.

Hill explained that this proposal does not raise the fees on all of the applications. Some are raised by a small percentage and others by a larger amount.

Strand asked for a comparison of the number of applications in 2006 compared to 2005. Hill believes that they are slightly down this year.

Larson confirmed that this is the first increase since 2003. Hill concurred. He suggested that this probably won't be the last time there will be a review of the fee schedule because if it is done more frequently, it is less painful to those that are paying the fees.

Opposition

1. Coby Mach and Peter Katt appeared on behalf of the **LIBA** Board of Directors and testified in opposition. Mach observed that the city is now hurting from negative sales tax receipts, and LIBA believes the downturn in new home construction is having the greatest impact on our city. Costs to build a new home are increasing – lot costs, impact fees and stiffening of stormwater regulations. Some of the proposed fees show a 100% increase. If we need these increases, perhaps we should look at making cuts. There are fewer building permits being issued. Are we overstaffed? If there is less construction, there should be more time available for staff. LIBA believes this increase is being proposed because the Planning Department has been hurt by the slow-down in construction over the last two years. The staff report says the fees collected to date are down about 25% from the two previous years, reflecting the downward trend in building construction. In any private business, if business is down 25%, you make cuts. You don't increase the prices. LIBA believes that some cuts are in order as opposed to an increase in fees.

2. Fred Hoke, Home Builders Association of Lincoln, testified in opposition. He observed that the proposed fee increase is anywhere from \$10 to 100%. And we are in a down market in terms of building permits over the past two years. Increased fees ultimately become the responsibility of the home owner and new home buyer. When you add these fees to the impact fees, it has a tendency to discourage people from buying a new home. This increase plus the impact fees may have a negative impact on individuals who are able to purchase homes.

Permits have been down over the past two years. The city should not send a message to Lincoln and to the surrounding area that Lincoln is going to continue to require higher home prices.

3. Rick Krueger testified in opposition to the new fee for street tree maintenance. He would like the Planning Commission to request that the City Council consider privatization of the street tree implementation process. It would be a savings of staff time and money to the city and a win-win situation.

Krueger further pointed out that this year the city started a program requiring an individual to be certified to work in a public driveway. Once certified, that individual can do landscaping and erosion control in the city right-of-way, so it would not be much of a stretch for the same person to mark the curbs. In the vast majority of new subdivisions, we could then free up city staff to work on other areas. We need to drive toward simplicity in the street tree process.

Krueger requested that Section 26.33.020 c), which is the street tree maintenance fee, be deleted, and that the Planning Commission advise the City Council to consider privatization.

Strand asked how Krueger felt about the remainder of the increases. Krueger's comment was that if your business is down 25%, you have to look at restructuring somehow. If his business was down 25%, he would be looking real strong at the payroll.

Carlson commented that there would need to be some education on the street tree process. Are there other circumstances where the city comes out to inspect? Krueger advised that when a developer does a preliminary plat, the plat shows on each lot where the tree should be located. There are certain standards in marking the curbs. He does not believe it is very hard to do. If you had a problem, you could contact the city for assistance. If you haven't planted a tree over a manhole or water line, he does not believe it would be mis-located. Carlson does not want a circumstance where we make the people upset when the city comes out and suggests that the trees are in the wrong place. Krueger suggested that those individuals that become certified can refer to the design standards. He thinks they could work on the sidewalks in the future, also.

3. Mark Hunzeker testified in opposition. He noted that some time back, the requirement for a preliminary plat to accompany a PUD and CUP was eliminated, and now one of the major reasons cited for an increase is that we have had a revenue loss as a result of the elimination of the duplication of those permit applications. We need to remember why we eliminated those application requirements. It was because we were requiring duplicative papers to be filed, which contained virtually identical information, requiring two different reviews and not really gaining anything. So, we streamlined it and there was a fanfare about streamlining the process by no longer requiring the preliminary plat. But now, it appears that the city is saying, "oops, we intended to eliminate the unnecessary duplicative work, but we really didn't mean to save you any money." Hunzeker suggested that the increased fees are intended to recoup that money. He urged that the Planning Commission recommend denial of the entire package, and if there are other fees where specific increases are appropriate, the Planning Commission should require the staff to come back with more specific and justified proposals.

4. Mike Eckert, Civil Design Group, appeared on behalf of several of his land planning clients, and agreed with the previous opposition. The timing is not right and the reasoning is not right. These fees have traditionally been imposed to compensate for the extra time needed to review applications. With the statement that applications are down 25%, we would assume that there is more staff time for review. To increase the fees just because business is slow does not seem appropriate. It is opposite to the intuitive economic relationship of supply and demand. If demand is down, why is it necessary to charge more? He attended the Angelou report update this morning and he believes that this proposal goes in the opposite direction of what we are trying to promote in this community with economic development and providing an atmosphere that is as growth friendly as possible.

Staff questions

Carlson wondered whether planners were added to staff during the boom years of the 1990's when building permits issued rose dramatically. Marvin Krout, Director of Planning, believes that two planner positions were added in 1999, and there was a fee increase at that same time, in response to the increased demand and to a desire for better service from the development community. Carlson asked whether that was proportionate to the 50% increase in building permits, and Krout answered, "no".

Krout further commented that Angelou pointed out that housing in Lincoln is relatively moderate and has not depreciated over the past two years, and the fact that there is housing supply is a positive indicator in terms of this being a market that is moderate and easier to get into. We are really talking about small potatoes, probably a total of \$25,000 in the Planning Department budget, or \$50 per lot. In order to deal with the pressure of property tax and declining sales tax, a number of city departments have had to cut their budgets in next year's budget proposal. The Planning Department has cut its budget by more than the \$25,000 to deal with that issue. It is true that our revenues are down, but and the number of applications is not down proportionately to the number of costs. An application requires a certain amount of work whether it is 100 lots or 10 lots. We also are spending time trying to make improvements and simplifications to the zoning code, such as the outdoor dining ordinance heard today. We have spent a great deal of time dealing with annexation agreements over the last year. We hope that we can reduce that in the future, but we also expect some upturn in the future in terms of permits. In addition, we have made our lives more complicated in dealing with older neighborhoods and the inner city areas in using developer agreements to allow for zoning that has been denied in the past, such as 9th, 10th and Van Dorn. Krout also suggested that if he had an opportunity to reduce staff and still provide a good level services, he would have looked at that carefully and suggested that to the Mayor, but he has already made cuts and can't afford to make any more. Do you want to put \$25,000 more pressure on the property tax or is it reasonable to look for moderate increases in these fees?

Lynn Johnson, Director of Parks & Recreation, responded to Krueger's comments about the street tree maintenance fees. He stated that the Parks Department has tried to work very hard to make the process of street trees as streamlined as possible. For example, the

development community requested that we release the surety at the 50% and 75% level, and at that same time, the certified landscape contractor program was initiated. We have streamlined the process to that point. We have looked seriously at asking the certified land contractor to mark those locations, but the challenge is that things are always happening in the field. When that tree is planted, the city is accepting the liability for the location of that street tree. We had street trees over water mains in two situations last year and the city had to spend \$1,000 to upgrade the water main and keep the tree. It is Johnson's position that it is important to have city staff determine the location of those trees to avoid these liability problems in the future. He believes they have made the process as streamlined as possible.

Strand questioned the change of zone fees. She believes that the Planning Commission subcommittee had agreed that a downzone request for less than one acre would be \$400, and for more than one acre would be \$750. She thought the subcommittee had discussed increasing that fee because of the amount of staff time it takes when a large area comes in. The subcommittee took the position that \$750 was appropriate. If you have an owner requesting a change from AGR to R-3, it is a lot easier than when you have an existing area with a thousand houses and six different zoning districts. That takes a lot more staff time.

CHANGE OF ZONE NO. 06023**ACTION BY PLANNING COMMISSION:**

June 21, 2006

Strand moved to deny, seconded by Carlson.

Strand commented that she has nothing against Planning or Parks. She just does not believe the time is right – when the market is healthy and strong is the time to do an increase to cover staff time. The timing is not good when the market is extremely soft. Angelou also said the development community should not continue to bear all the costs because it is directly reflected in the housing costs, and the housing costs have dramatically increased in the past few years. She is also concerned about some of the increases being much larger than others.

Carroll pointed out that there has not been a fee increase since 2003, and it's not like we do it annually. The increase in production of houses in 2003-04 were included in the previous prices. We are covering for three years, and he does not believe it is a substantial increase. You have to raise your fees in any business over a 3-year period. By streamlining and making improvements, the staff has saved developers money. This fee increase is not as substantial as the savings that have been brought about and which will continue by the streamlining effort.

Motion to deny failed 1-7: Strand voting 'yes'; Cornelius, Taylor, Larson, Carroll, Sunderman, Krieser and Carlson voting 'no'; Esseks absent.

Carroll moved approval, seconded by Sunderman.

Strand moved to amend Chapter 27.80, to add a separate fee for downzoning: \$400 for less than one acre, and \$750 for more than one acre, seconded by Carroll.

Carlson inquired whether this would require readvertising and it was determined that it would not.

Carlson pointed out that this change was a discussion in a subcommittee meeting which was not a major meeting and not advertised. He presumes that if this change were advertised, the neighborhoods involved in trying to protect their neighborhood with downzoning would have a lot of comment that would be germane to this change. He will vote against the motion because he does not support it and he thinks it should be advertised properly.

Cornelius stated that he intends to support the motion because there appears to have been a consensus in the subcommittee. He also believes that it is fair because a large area using a lot of planning resources should bear some of the burden of the cost.

Motion to amend carried 6-2: Cornelius, Strand, Larson, Carroll, Sunderman and Krieser voting 'yes'; Taylor and Carlson voting 'no'; Esseks absent.

Motion for approval, as amended, carried 5-3: Cornelius, Taylor, Carroll, Sunderman and Krieser voting 'yes'; Strand, Larson and Carlson voting 'no'; Esseks absent. This is a recommendation to the City Council.

MISCELLANEOUS NO. 06005

ACTION BY PLANNING COMMISSION:

June 21, 2006

Carroll moved approval, seconded by Sunderman.

Strand moved to amend to delete Section 26.33.020 c), the street tree fee. Motion failed for lack of a second.

Strand moved to amend to change the language under Section 26.33.020 c) from per street tree to per lot, which is now the staff recommendation, seconded by Cornelius and carried 8-0: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson voting 'yes'; Esseks absent.

Strand stated that she will continue to not support this legislation at this time with the soft market.

Main motion for approval, as amended, carried 5-3: Cornelius, Taylor, Carroll, Sunderman and Krieser voting 'yes'; Strand, Larson and Carlson voting 'no'; Esseks absent. This is a recommendation to the City Council.

COUNTY CHANGE OF ZONE NO. 06024

ACTION BY PLANNING COMMISSION:

June 21, 2006

Carroll moved approval, as revised by staff, seconded by Sunderman and carried 5-3: Cornelius, Taylor, Carroll, Sunderman and Krieser voting 'yes'; Strand, Larson and Carlson voting 'no'; Esseks absent. This is a recommendation to the Lancaster County Board.

COUNTY MISCELLANEOUS NO. 06006

ACTION BY PLANNING COMMISSION:

June 21, 2006

Carroll moved approval, as revised by staff, seconded by Sunderman and carried 5-3: Cornelius, Taylor, Carroll, Sunderman and Krieser voting 'yes'; Strand, Larson and Carlson voting 'no'; Esseks absent. This is a recommendation to the Lancaster County Board.

****Break****

COUNTY SPECIAL PERMIT NO. 06035

FOR SOIL EXCAVATION

ON PROPERTY GENERALLY LOCATED

AT HWY 77 AND DAVEY ROAD.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 21, 2006

Members present: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson; Esseks absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None

Additional information submitted for the record: Mike DeKalb of Planning staff submitted two additional letters in opposition with concerns about a potential race track, years of disruption, impact on the neighborhood, traffic and vehicles in the area, groundwater contamination, vehicle storage, surface water and topsoil.

DeKalb also advised that the NDOR has indicated that at this time the borrow pit is not related to any NDOR projects; that traffic would not be an item of concern for trucks coming out at the mid-mile point, even up to 100 trucks a day, as it was pre-designed for potential commercial.

DeKalb noted that perhaps the existing trees that are not part of the permit area are not protected, and staff would not object to adding a condition that trees not in the specific area of excavation shall be retained.

Staff presentation: DeKalb then did an overview of the application, stating that this is the same location and similar application to what was heard by the Planning Commission on May 10, 2006, which permit was recommended to be denied 5-4. That application was withdrawn by the applicant. The basic difference is that this application proposes 26' cuts, no fill, and 1.3 million cubic yards to be removed. The prior application showed 41' cuts, 58' of fill, and 1.6 million cubic yards to be removed. The prior application also showed a flat stretch between cut and fill and this application takes it off the top of the hills.

Proponents

1. Mark Hunzeker appeared on behalf of the applicant, **Greg Sanford**. This is the same site that had public hearing on May 10, 2006, which was recommended for denial on a vote of 5-4. Much of the testimony in opposition focused upon fears that this applicant was preparing the site for construction of a drag strip. The applicant took those comments by the Planning Commission to heart, i.e. that the grading plan provided for moving more dirt than necessary and filling some areas, as well as removing the material needed for the dirt contracts that have been requested. There were also concerns about drainage.

This plan calls for removal of 1.3 million cubic yards of dirt with 26' cuts, whereas the previous was for 1.6 million cubic yards and 41' cuts. There is no change in the site drainage whatsoever. One of the prime directives that the applicant gave the engineer was to keep all the water going to the same place it goes today. This application lowers the site, maintaining the same drainage of water from the site in the same direction it presently goes. The main difference will be less severe slopes and therefore probably slower runoff than exists today. This application also provides for no fill versus fills of up to 28' in the previous application.

This application is only for the extraction of soil. It has absolutely nothing to do with any future use other than agricultural. The owner has an agreement with a farmer to farm the site, compensating the farmer for any crops disturbed by the excavation activity.

With regard to groundwater, the applicant has spoken with the Natural Resources District and found the closest registered well to be ½ mile west of Hwy 77 and north of Branched Oak Road. It is 300' deep, static water level of 170' and pumping level of 200'; there is a well ¾ mile to the west with a depth of 243', static water level of 158', and pumping level of 180'; and also ¾ mile to the west, there is a well with a depth of 251', static water level of 148' and pumping level of 225'. In other words, the water table in this area is quite deep and there is no danger of interfering with water tables in making the cuts requested.

Hunzeker submitted a motion to amend to add conditions of approval that are necessary to bring this application into compliance with the requirements of not only the county requirements for mining permits, but also the city requirements, which are used as a checklist in the staff report for evaluating this application.

Hunzeker believes that this is a very straight forward and very simple application, one which should be approved without much question or controversy. He requested that the discussion be kept to this application and not what it might be some day in the future.

Larson believes it is hard to separate this application for mining and the future use of the property. There has been quite a bit of publicity about the fact that it will have something to do with race cars or drag strips. What is the use going to be? Hunzeker observed that it is no secret that his client was the owner of the drag strip in Scribner. And that it is possible there will be an application for a similar facility near Lincoln. Whether it will end up being on this site or not, or whether it would be applied for or not, remains to be seen, but he would not deny that that is a possibility. The grading plan on the previous application was essentially a final grading plan for that use, and it became the issue at the hearing. In response, the applicant has amended the grading plan because he does have a legitimate need to supply contractors who need dirt for projects in this area. The applicant wants to go forward with a grading plan that will address those needs. This application eliminates any change of any drainage; it reduces the amount of extraction from the site, and it eliminates movement of any dirt for the purpose of fill on the site. Thus, the total amount of dirt that is going to be moved either from the site or moved within the site has been reduced by 600,000 to 700,000 yards, in response to the concern that we were doing too much to just supply the dirt necessary for the construction projects that people are needing dirt to bid. If there is an application in the future for a use other than agricultural use or a use for anything other than either 20-acre single family home sites or other uses that are allowable in the AG district, it will require a completely separate application. In the case of a race track facility, it would require a special permit application, complete with grading plan, site plan for any structures, access, parking, etc. He believes that any discussion of a potential race track is completely irrelevant to this application.

Larson reiterated that it is hard for him to separate the two issues because all of the objections were based upon the objection to a drag strip or race facility. Hunzeker understands that was the basis for the objections, and that is why the applicant did a completely new grading plan. From the previous grading plan, it was at least plausible to argue that that application pre-approved another use. Now, we are simply lowering the site, maintaining the same drainage, with the same basic contours. It is going to have flatter slopes. We are not preparing this site for any other use. We have to come back with a completely different application for any other use other than AG. We are required to replace the soil and replant and make sure that we maintain those contours that are shown.

Larson indicated that he was not necessarily opposed to a race facility of some sort, but if that is what it is going to be, he wants to know because maybe that would be a good thing for economic development purposes, etc.

Hunzeker anticipates that there will likely be an application for a use other than AG on this site before the expiration of the three-year period of this permit. But, he cannot guarantee it. There are places that actively recruit and attempt to draw people like Mr. Sanford to their city

or county to do exactly what he had in Scribner because of the economic development aspects. There is no certainty that it will even be here.

On the chance that there is a use other than AG on this site, Larson wants to know more about what activity would be there. Hunzeker stated that he could not give any more information until they are prepared to make the application.

Strand recalled discussing hours of operation at the last hearing. Hunzeker concurred that these conditions do not address the hours of operation. He believes that there was a motion to limit it to daylight hours, Monday through Friday. Strand was concerned about football Saturdays. She wondered about restricting the hours of operation to five days per week, Monday through Friday, during daylight hours, and to require bonding for damages caused by trucks to the county or state roads. Hunzeker suggested that the bonding requirement is not necessary because the applicant will enter into an agreement with the County Engineer about the maintenance of the road and repair for any damages.

2. Carol Brown, 2201 Elba Circle, testified in support. We do dirt removal for other things. We're doing it right now along the interstate. There are certain guidelines and regulations. And this circumstance should not be any different. We move dirt for the landfill. We move dirt for Hwy 77. This is not any different. We cannot treat this any different. She is a several year friend of Greg Sanford. Her sons are drag racers. We need to generate some new ideas in this community. We need to start thinking outside the box. Greg Sanford is a very workable person. It would take one phone call to get him to get together with people to talk this out. We have laws that will protect the people. This is connected to a new opportunity. If this is not approved today, you will deny millions and millions of dollars of industry coming to this area. When we get into motor sports revenue, you will be amazed. Other communities and other states have it. This has been pushed around for years. We just really need to start looking at these things and look at what is best for our young crowd that we want to keep here. This is an opportunity. It must be approved.

Opposition

1. Tom Keep, 8601 Davey Road, registered professional engineer, testified in opposition. 25-30 individuals also stood in the audience in opposition. Keep has environmental concerns, i.e. potential for groundwater contamination. He is concerned that the removal of the soil would uncover sand and gravel deposits. There are 17 unregistered wells close to the property. It is his understanding that a soil mining operation recently occurring at Waverly and 40th, under the guise of excavating, was abandoned after sand and gravel was encountered at less than 20'. Before the County Board acts on this permit, the applicant should be required to provide a geological investigation to determine that the soil is available for mining and that no aquifers will be encountered or exposed to contamination.

Keep is also concerned about the potential for off-site damages from surface runoff and soil erosion. Erosion will increase almost 10-fold from 4 tons per acre per year to 41 tons per

acre per year. The rate of surface runoff would also increase almost 10 times under the bare ground conditions. This would result in significant offsite effects to a pond located just west of the Danish cemetery. 33.5 acres of the proposed mining drains to this pond used for fishing and recreation. Before approving this application, an erosion control plan should be provided that includes water and sediment control basins that limit the rate of surface runoff and soil erosion. Up to 1,375 tons of sediment per year could be delivered to this pond from the mining operation. The staff report states the proposed pond would be used to catch sediment. No pond is shown on the submitted grading plan. Keep believes that before acting, an erosion control plan should be provided that includes water and sediment control basins, limiting runoff and erosion to existing conditions for a 10-year frequency storm event, which is a normal requirement in most cities.

Another issue is site reclamation. Most of the previously approved soil mining sites in the area have not been reclaimed to a condition for a use compatible with their agricultural zoning, but rather industrial uses. 79 acres will be disturbed by mining. He is concerned that the applicant will not follow the grading plan and will work the entire site many years before any reclamation will occur. There will be no incentive to reclaim the site after the soil has been mined and sold. No seeding plan is included with this application.

Keep recommended that a special condition be placed on this application which requires the mining to occur in four zones of 20 acres each, with reclamation required in each zone before proceeding to the next zone. This recommendation is based upon existing watershed rates. This would allow optimization of water and sediment control and would limit the time period any one watershed is exposed to off-site effects. The reclamation requirement should be placement of 1' of topsoil and seeding of the area to the specifications in the Nebraska NRCS critical area seeding practices.

Keep further observed that this site is currently classified as AGL crop land, highly erodible land. For it to return to agricultural use, this site would have to be returned to a condition that would limit erosion to 5 tons of soil loss per year.

Larson inquired as to how much sediment goes to the pond now. Keep stated that it is four tons per acre. It would be about a ten-fold increase if this permit is approved, and he is requesting that adequate on-site water and sediment control basins be used. The land is currently in row crops. Current soil loss would be in the rate of 3-4 tons per acre per year. It has been classified as highly erodible land. The applicant has taken it out of the farm program because if he does any soil disturbing activities with planted crops, he would violate the requirements of the agricultural programs.

2. John Baumgartner, 6030 Davey Road, directly north of the proposed site, testified in opposition. We need to talk about, "pay me now or pay me later". He has spoken with excavating contractors; he has measured truck lengths and tires and other standard requirements placed on soil removal sites. Each yard of soil weighs 1.5 tons. Every tire diameter is about 43 inches. The standard length of rock road entrance to a highway is only

50'. The standard truck length is over 70' and tandem trucks go as far as 84'. The applicant is asking to move 1.3 million yards of soil, which is a 19% reduction from the previous request. He provided a chart showing the truck counts to haul 1.3 million yards: 76,470 side dumpers; 130,000 tandems; or 260,000 standard dump trucks. He urged that control of this site has to be watched very carefully. He estimated there would be a total of 134,588 trucks, i.e. 967 trucks per acre mined. Due to the amount of soil and time period of this permit, there need to be some controls on this site. He made comparisons to the Bluff Road landfill and its truck traffic. Each truck going into the landfill hauls an average of 10 tons per truck. They haul 800 tons of waste daily into the landfill, which would be 80 trucks per day average, or 8.42 trucks per hour. This site would be from 12.25 trucks per hour up to 21.5 trucks per hour. The landfill has a black top road with a flashing yellow light sitting at the top of the hill. They take steps to control the dust and they pick up the trash weekly. At a minimum, this permit should have to meet the same type of requirements as the Bluff Road landfill. A condition should be added that the permittee be required to have a 6" thick rock road made of no less than 2" rock to remove mud and dust from the tires. There should also be a condition requiring a performance bond be posted to cover costs of reclamation, road damage, cleanup required, corrective actions, and fines assessed.

Baumgartner also discussed safety concerns.

Larson asked how Davey Road and Branch Oak Road relate in terms of being at the top of a hill. Baumgartner advised that Davey Road is on the bottom of a slope and Branched Oak goes up to Hwy 77. The property sits on a hill and Hwy 77 was built on a hill, so it is kind of at a crest. At either end there is a line of sight problem. There is a driveway right on Hwy 77 which will help address that.

3. Karen Kurbis, 17500 N. 84th, testified in opposition. Her issues are related to health and safety. This permit will affect over 200 people in this rural community and it will impact the safety of Hwy 77 commuters. While mining is a privilege, safety is a right. There are already safety concerns with the soil mining taking place on Hwy 77 near Bluff Road with slow moving trucks coming out into faster speed traffic and roads covered with soil from the mining. This results in traffic hazards. Lack of enforcement is a concern. She showed photographs depicting an inch of soil on the road, and the mud tracks. She is opposed to the use of Davey Road or Branched Oak Road for this operation. Mr. Sanford has ignored the neighbors' request for safety by placing the proposed construction site on Branched Oak Road. She is concerned about the ability of heavy equipment vehicles to safely emerge onto the 65 mph traffic on Hwy 77. Traffic from the south, or Branched Oak Road, can be visualized about 50 seconds and from the north about 10 seconds. The Hwy 77 access is a flatter piece of land and can be visualized about 55 seconds northbound and 14 seconds southbound, but it would allow a much safer integration of the heavy equipment coming into the highway traffic.

Kurbis requested that all soil moving trucks be required to enter only by the Hwy 77 access on the west, never from Davey Road or Branched Oak Road. The school buses use these roads. In summary the safety concerns should be addressed by:

Construction access: Hwy 77 only
Hours of operation 7:30-4:30 weekdays
Construction entrance - rumble bars
Post bond for road damage
Monitor road sediment.

This should be done to all mining sites. The neighbors should be reassured that the conditions will be met or the operation will be shut down.

4. Joni Christensen, 8405 Davey Road, testified in opposition. She testified to the concern for maintaining the integrity of the property and the consideration for some form of reclamation process, such as mining smaller sections of land to eliminate erosion and blight; insure that grading be consistent with proposed plan; and topsoil returned to the surface as grading is completed. These issues are not addressed in the application. How do we make sure developers are maintaining the value of the property? Developers need to be held accountable. A performance bond should be required.

5. Phil Pfeiffer, 15400 N. 56th Street, testified in opposition. His property is directly south of the proposed site. He is concerned about it becoming a blighted site. He specifically moved here to be out of the path of south and southeast Lincoln. Excavation sites should be required not to leave an ugly mess behind. He requested that reclamation be forced in a timely fashion and in some respective manner. He recommended that the applicant be allowed to excavate only one area of approximately 20 acres at a time; that he be required to restore at least 1' of topsoil, seed and mulch; that he be required to show good faith and good stewardship by reclaiming one area before another is torn up; and that he be required to establish his own entrance ½ mile north of Branched Oak Road. If Mr. Sanford is sincere about being a steward of the land, he should be required to post a \$1,000,000 performance bond to repair road damage, clean mud and dirt off the road and control road dust. His silt will run onto Pfeiffer's property and there need to be funds available to remove it. This applicant should be required to pay the cost of doing business. This permit must not be approved without specific requirements for reclamation.

6. Wayne Nielsen, 14000 N. 70th, testified in opposition. He and his son, who resides just north of him, have a farm business in this area. It is his observation that land mining affects the character of the landscape and the agricultural community in perhaps not the most positive way. Safeguards and other provisions could ameliorate that problem, but he has not seen much action taken to take care of those situations. He emphasized that by opening up a number of mining sites, the landscape deteriorates. Public officials can then declare the area blighted, which then allows tax increment financing (targeted tax cuts aimed at attracting particular employers). He believes this is a bad policy. Targeted tax incentives do not spur real growth. Targeted tax incentives are inevitably financed at the expense of established property owners and businesses.

Nielsen is a trustee for the cemetery located across the highway. The board is in opposition to this mining permit. This is a very well kept and attractive cemetery. It is the board's desire that the surroundings be kept up in a like manner. The cemetery and the land across the road have half-mile entrances for access to Hwy 77. If there is to be mining activity, they would expect that funeral processions and grave side services be respected.

7. Cliff Walstrom, who lives on the northwest corner of Davey Road and Hwy 77, testified in opposition. He has a good well but he is not sure how long it will stay that way. He has a pond with fish. He does not want it to get silted up and plugged up. The drainage off this site comes onto his property in three different places. Is someone going to keep the weeds down on that property? The volume of traffic coming in on Hwy 77 is a death trap. Traffic has been clocked at 100 mph going by his place.

Staff response

DeKalb corrected the staff report, Analysis #5 d), which refers to a "proposed pond". This is an error. There is no pond.

DeKalb had no objections to the applicant's proposed motion to amend the conditions of approval.

Strand inquired about the suggestion for a geologic test of the soils. DeKalb indicated that this has not been a requirement on excavation permits, but only on subdivision permits.

Strand inquired about conditions for erosion control. DeKalb pointed out that the standard condition is in the staff report. This property is outside the city watershed management area. Condition #2.3 requires an erosion control plan approved by the NRD. Relative to enforcement, DeKalb understands that the County Engineer monitors and has occasionally filed suit where erosion has filled up and sedimented the ditches. The NRD also has enforcement capability. They can and have taken landowners to court for sediment runoff. The NDOR will do the same thing to protect their roads and rights-of-way. There are a variety of mechanisms in place.

DeKalb further advised that the standard of the NRD is "best management practices", including silt bales or fences to prevent sediment and runoff control.

Strand assumes that site reclamation might help erosion. She is going to suggest that they do excavation in four different locations and reclaim one by one. She assumes that would help answer the erosion control problems. Is site reclamation normally required? DeKalb stated that it is not normally required. It is optional. In the city, when we require replacing topsoil and seeding, that is normal reclamation. When it is on the edge of town, it is typically returned to farming.

Strand inquired whether it is unusual or common for a performance bond for site reclamation. DeKalb stated that a performance bond has never been required in the county. There are some circumstances where it has been required in the City, i.e. Arbor Road between 56th and 70th, where the city required a bond because the County was in the process of upgrading that road and the state wanted to insure that there was no infringement on the state road right-of-way and required the bond to make sure topsoil was replaced and no damage to the County road.

Larson commented that the line of sight is a concern with trucks exiting on Hwy 77. Would a temporary exit at approximately mid-way be a better line of sight? DeKalb pointed out that the staff condition of approval is that the County Engineer approve any access, and that the NDOR approve any access onto Hwy 77 because they know the lines of sight. NDOR felt the half-mile curb cut that is there today could handle commercial traffic and could safely handle this proposal. The checkpoint is approval by the NDOR.

Sunderman inquired about mud on the tires, etc. DeKalb noted that on some of the city applications, instead of having rock for a certain distance, a rumble stretch to knock the mud off has been required. It is against the law to track mud onto a traveled way. The basic default is that they are liable if they are causing this hazard.

Cornelius inquired whether the 100 trucks a day offered by NDOR is an actual number. DeKalb suggested that 200 trucks a day assumes the entire operation is complete in three years. That time frame was not requested by the applicant. It is not unusual for an applicant to have to request an extension of time on the permit.

Carlson sought confirmation of the single construction entrance on Branched Oak Road. DeKalb pointed out that the County Engineer indicated a preference for Hwy 77, but all three roads are being kept as options. We want to have approval by the agencies for those accesses.

Response by the Applicant

Hunzeker pointed out that both the County Engineer and the NDOR have had an opportunity to comment on this application. Neither of them have expressed any concern relative to traffic.

Hunzeker agrees that it is very unlikely that this amount of soil will be removed from this site in a three-year period. It is very unusual for most of these permits to extract all of the soil authorized to be removed within the permit period. The County Engineer's comments indicate that the permittee would be responsible for maintenance of the county roads and repair any damage to the county roads, and that the County Engineer would prefer access be limited to Hwy 77. There is a commercial unrestricted access to Hwy 77 at the ½ mile point at the top of the hill. The accesses at Davey Road and Branched Oak Road both have plenty of sight distance because they meet the grade of the newly reconstructed Hwy 77, which, as built to standard, would allow for relatively high speed sight distance at those intersections.

Therefore, Hunzeker does not believe traffic is really a concern.

Hunzeker believes that the applicant has addressed the reclamation and erosion control issues with the proposed amendments.

Jeremy Williams, Design Associates, explained the erosion control plan. It was not submitted as a part of this application because it is a separate permit through the NRD. Rock construction entrances are standard and required. Dust control is required to be addressed with watering trucks kept on site. The general approach of the erosion control plan is temporary diversion dikes around the perimeter of the site that would divert water to twelve different sediment basins.

Larson believes that the incremental removal seems logical. Hunzeker agreed that it is absolutely logical. It is inconceivable that anyone would simply go in and strip this entire site. There is a farmer growing crops on this farm today and the applicant does not want to disturb those crops. He believes that the numbers cited by the opposition are based on the entire drainage area being stripped and unprotected. He confirmed that that will not happen. There will be sediment control basins in each of those areas so that there is no uncontrolled runoff or erosion going into things like the ponds or the creeks. The NRD, NDEQ and others will not let that happen. It is simply not an option and there are some very large fines that have been levied in Omaha to remind people that you just don't let that happen.

Carlson inquired about runoff and sediment during construction and post-construction. Hunzeker did not know what that standard might be, but his instinct is that that probably is not a problem. Williams offered that the standard is no discharge as far as sediment. Hunzeker added that it is farm land today. There is erosion from that land today. This permit will certainly not exceed what is currently coming off the property.

Carlson noted that the site is 160 acres, and he is interested in a condition requiring that no more than 15% shall be mined at any one time, i.e. 24 acres at a time. Hunzeker's only concern about an arbitrary number is that the drainage areas and subdrainage areas are not uniform in size and he does not know that they can necessarily guarantee that there will be a progression "from this one to this one to that one". There may be some overlap just to be able to make the grades. Carlson is suggesting that since the area to be mined is less than 80 acres, 24 acres should build in flexibility. Hunzeker assured that the NRD and NDEQ regulations will require the applicant to maintain the control over the discharge of sediment regardless of the size and regardless of the phasing. Williams added that the permit is not clear until you reach a 95% stabilization point.

Hunzeker stated that this applicant has had interest from 2-3 contractors who have some sizable projects in mind. The contractor has to be assured he has the supply of dirt before he submits a bid. All the standards relative to catching the runoff and trapping the sediment apply regardless of the area that is exposed.

Strand reiterated that the County Engineer suggested that the trucks exit and enter onto Hwy 77. Hunzeker believes the County Engineer "preferred" this access. It depends on which portion of the site is being excavated. The County Engineer has not made any objection to the proposed access to Branched Oak Road. The plan does not show access to Davey Road.

ACTION BY PLANNING COMMISSION:

June 21, 2006

Carroll moved to approve the staff recommendation of conditional approval, with amendment to include the additional conditions submitted by the applicant, and with amendment to include retention of the trees outside the area of excavation, seconded by Larson.

Strand moved to amend to add hours of operation of Monday through Friday, daylight hours only, seconded by Cornelius and carried 7-1: Cornelius, Strand, Larson, Carroll, Sunderman, Krieser and Carlson voting 'yes'; Taylor voting 'no'; Esseks absent.

Carlson moved to amend to add language to Condition #2.3:

An erosion control plan shall be approved by the Lower Platte South NRD. Such plan may be more restrictive, but at a minimum shall require mining runoff and post-mining runoff of water and silt to be no greater than the current condition.

seconded by Larson.

Carroll has experience with these sites and he knows that the NRD does a very good job. They are the experts. If they approve a plan, they require it to meet the specifications. It is not for us to tell the experts what the standards are.

Carlson indicated that his motion is just setting a minimum. He is trying to react to the public to provide some assurance.

Carroll has faith in the NRD to do a good job.

Motion to amend Condition #2.3 failed 4-4: Cornelius, Larson, Sunderman and Carlson voting 'yes'; Taylor, Strand, Carroll and Krieser voting 'no'; Esseks absent.

Carlson moved to amend to require that no more than 15% of the parcel shall be mined at any one time without reclamation. Motion failed for lack of a second.

Discussion on the main motion, as amended:

Carroll observed that all the applicant is going to do is mine dirt. He believes they have a right to do it if they follow the guidelines and standards of the city, county and state. Everything is

monitored by the state. He has faith in the NRD to do their job to oversee, and the County Engineer as far as roads and any road maintenance to be done. He believes all the safeguards are in place.

Larson commented that this is a legitimate business. He agrees that the safeguards are built in to satisfy the fears of the opposition.

Carroll expressed appreciation to those who testified and attended the hearing. It is important and he appreciates their input.

Carlson believes it is appropriate for the Planning Commission to require additional standards; however, this may illustrate that we need to be better educated on the current standards. He is concerned about no standard for disturbance. While it will be self-limiting in some sense, he would be surprised if they would need access to 1/3 of their dirt at one time. He thought the number he had suggested was well chosen.

Larson observed that dirt mining is such a big industry, so maybe the Planning Commission needs to look at some of the standards.

Cornelius suggested that it might be beneficial to look at the way we site other utilities since this kind of facility will tend to be disruptive or has potential to be disruptive to the area. It might be worthwhile to site dirt mines in advance.

Taylor clarified that this vote does not mean that the mining will result in an eventual noise disturbance. There will be another opportunity to voice concerns about that.

Motion for conditional approval, as amended, carried 8-0: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson voting 'yes'; Esseks absent. This is a recommendation to the Lancaster County Board.

ANNEXATION NO. 05008
TO ANNEX NEBRASKA STATE FAIR PARK,
LOCATED AT N. 14TH STREET AND MILITARY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 21, 2006

Members present: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson; Esseks absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: None

Staff presentation: Brian Will of Planning staff explained that this is a request for annexation of approximately 226 acres known as Nebraska State Fair Park. Staff has made a recommendation to find that this request is in conformance with the Comprehensive Plan. Principally, the staff finds that it complies with the city's annexation policy – land which is contiguous and generally urban in character may be annexed, and land engulfed by the city should be annexed. State Fair Park is completely surrounded by the City of Lincoln. Secondly, the annexation generally implies the opportunity to access all city services. Currently, State Fair Park is served by all municipal services, city sewer and water. Relative to fire and police protection, State Fair Park is currently served by the Lincoln Fire and Rescue via a standard mutual aid agreement. The Lancaster County Sheriff currently provides law enforcement, and after annexation, the Lincoln Police will provide police protection.

Support

1. Tam Allan, Board Member of Nebraska State Fair Board, stated that the Fair Board has not taken an official position on this annexation because they have not discussed an annexation agreement; however, in visiting with the state and through cooperation with the Mayor, he would not imagine that the Board would have any opposition as this goes forward to the City Council.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 21, 2006

Strand moved a finding of conformance, seconded by Carroll and carried 8-0: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson voting 'yes'; Esseks absent. This is a recommendation to the City Council.

COMPREHENSIVE PLAN CONFORMANCE NO. 06006

FOR DECLARATION OF SURPLUS PROPERTY

and

CHANGE OF ZONE NO. 06034

FROM P PUBLIC USE TO R-6 RESIDENTIAL

OR O-2 SUBURBAN OFFICE,

ON PROPERTY GENERALLY LOCATED

AT THE NORTHEAST CORNER OF

S. 27TH STREET AND OLD CHENEY ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 21, 2006

Members present: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson; Esseks absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan on the declaration of surplus property, and approval of a change of zone to R-6 Residential, as opposed to O-2 Suburban Office.

Ex Parte Communications: None

Staff presentation: Ray Hill of Planning staff explained that the option for O-2 zoning was included at the request of City Council member, Jonathan Cook. However, the staff is still recommending approval of R-6 Residential and a finding of conformance with the Comprehensive Plan for the surplus declaration. The staff is taking the position that the appropriate use would be redevelopment to a residential district that would be compatible and integrated with the surrounding residential development to the east. This property is at the intersection of two major streets. It is the opinion of the Public Works Department that it would be unsafe to provide additional access to Old Cheney Road or to 27th Street. The R-6 zoning would allow for the expansion of the apartment complex to the east and north of this area, whereby the access to this property would be through their property and then access Old Cheney and 27th at the already planned for and designed access to the major streets. The road to the north would tie into that parking lot for the apartments. The roadway to the east would then tie into that roadway driving aisle to the east of this property. However, Hill pointed out that the approval of this change of zone has nothing to do with the actual site plan.

Larson inquired how the land would be disposed. Hill explained that it would be sold by the City. There has been some discussion with the surrounding property owner.

Larson believes that limiting the access limits who can purchase the property. Hill agreed that it has some limitations, but when this was all laid out it was intended to be a library site. The Library Board chose not to build here and they built at Densmore Park instead. That is the reason it has been vacant for many years.

Larson suggested that an entrance off of Old Cheney Road with a stacking lane would allow for more potential purchasers. Hill agreed, but Public Works has indicated that it is not a good idea to allow access to a major street in a right turn lane because that right turn lane is reserved for right turn traffic. If you have people wanting to go in a different direction, they have to cross traffic at a location where stacking may be occurring, which makes for a difficult situation. It would not allow anyone to be making a through movement or a left turn.

Larson observed that it seems like the apartment owner has a lock on this property. Hill believes that is the proper use for this property. It matches in with the property much better than a commercial zoning district. There is no way of integrating or working with the surrounding property if zoned something other than residential.

Strand inquired about the access had the library been built. Hill stated that the library would have been somewhat sharing the same driveway as the fire station. That was not the ideal situation and that may be why the library did not locate there. The access to the fire station was designed so that it could be a shared driveway.

Carlson noted that it is not the zoning so much as the access. If there were O-2 zoning and access were permitted, there would be other buyers.

The property was zoned residential before taken by the city.

2. Lynn Johnson, Director of Parks & Recreation, added that this property was acquired more than 20 years ago and purchased with the intent of a fire station and library. The fire station was constructed. When the library was looking to develop, their standards had changed and the building was too big to be accommodated on this site. Parks provided the land at Densmore Park for the library and the library transferred ownership with Parks. The Fire Department will retain an area for redevelopment or future expansion on that site. The proposal is to declare the remaining property surplus.

Johnson reiterated that Public Works continues to oppose direct access to S. 27th and Old Cheney Road due to proximity to the busy intersections. He has spoken with the adjacent property owner, who does have an interest in acquiring the property. They have done a conceptual site layout to add more apartment buildings on the site.

Johnson explained that an independent appraisal has been done based on residential zoning, and the adjacent property owner has agreed to pay that value. The surplus process does not require the property to go out for bid as long as the value is determined by an independent appraiser.

Strand inquired whether the interested property owner also owns the land to the north. Johnson confirmed that they do, and they would add more apartment buildings. The proceeds of the sale would go into the advance acquisition fund and would be earmarked for future park land acquisition. There are adequate park resources in this area. This takes a piece of property not suitable for park use and allows us to use those funds in other places where park land is more needed.

Public Testimony:

1. John Hoppe, Jr., testified in a neutral position. His company owned the property before the City condemned it, and he may be interested in purchasing the property. He suggested that the access makes the property of value to only one person. If the property were zoned O-2, it would only be the third corner to be zoned commercial. The fire station is commercial use, so it really has three-corner access. If the library had been built, they would have had access to 27th Street and to Old Cheney Road. He believes that the Planning Commission should recommend allowing right-in and right-out access on 27th and on Old Cheney. It is

possible to have a driveway both to the north and to the east away from the corner to allow safe access. He suggested that the private sector would not be allowed to sell off this property without giving access to 27th and to Old Cheney Road.

There was no testimony in opposition.

COMPREHENSIVE PLAN CONFORMANCE NO. 06006

ACTION BY PLANNING COMMISSION:

June 21, 2006

Carroll moved a finding of conformance, seconded by Strand and carried 8-0: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson voting 'yes'; Esseks absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 06034

ACTION BY PLANNING COMMISSION:

June 21, 2006

Strand moved to approve a change of zone to O-2 Suburban Office District, seconded by Larson.

Strand indicated that she would like to add an amendment to allow right-in right-out access, but that any necessary turn lanes would be at the developers' expense. Larson concurred.

Hill advised that this amendment could not be placed on the change of zone but could be part of the record.

Strand believes it makes sense to open it up to more bidders than just one for the benefit of the City. Larson and Cornelius agreed.

Carroll indicated an interest in delaying this action until the city finds the highest and best use and then comes back and asks for the zone change. He thinks it is premature to change the zoning until a deal has been struck. If public access is denied, the property cannot be sold as O-2.

Carlson presumes that any buyer would put that contingency in the contract.

Sunderman indicated that he is comfortable with the R-6 zoning. He understands the access issue. He does wish there were ways to get more bidders. Theoretically, anyone could bid on it. But the reality is that it will probably be just one bidder.

Carlson stated that he is comfortable with O-2 zoning. He thinks it makes sense to have another office building and employer there. He believes the access can be figured out.

Carroll inquired of Public Works as to how close a right-in can be located at the 27th Street intersection. Dennis Bartels of Public Works noted that you would be crossing a right turn lane with people going across into the left turn lane. Every time a development has been approved at that intersection over the last 10-15 years, we throw up our hands. Every traffic study will show that intersection failing once we get everything developed south of here. There is going to have to be a significant widening of that intersection. That is why we are so vehemently opposed to more driveways on Old Cheney and 27th Street because at some point in time that intersection is going to have to be improved, which is going to be painful. Public Works does not object to the land use, but it is not in the public interest for safety reasons to promote driveways that Public Works would oppose. If this were privately owned and the owner came in for a driveway, Public Works would raise the same concerns. It is a bad situation because of the land use. The residential plat and the fire station design would have been different had we known it was not going to be public use. At this point in time, we think it is not in the public interest to put those driveways out there.

Bartels further advised that the City has retained right-of-way to do some of the work at that intersection. The City is expecting to retain a reasonable amount of right-of-way whether it is R-6 or O-2. The City does not have any plans to do anything with that intersection at this point in time, but someday it will need to be addressed.

Carlson thinks it is better to retain more options and more bidders.

Cornelius stated that he was as excited as one could get about O-2, but the more he thinks about it, are we actually opening options or diminishing them? We could go from one buyer to zero buyers given that there may not be any access. And at that point, the one buyer could come back for a rezone to R-6. He is confused.

Larson agreed that it is a real dilemma. He thinks that the city would have it appraised and would not sell it for less than the appraised value. The appraiser will lower his appraisal substantially because of the lack of access. He recognizes that both 27th and Old Cheney are going to be expanded in the future.

Strand amended her previous comments, stating that she will not be totally supportive of a right-in on Old Cheney, but would support right-in right-out on 27th Street. It is frustrating to have all of these residences and it's impossible to get to them. Even if it goes to more apartments, she would favor more access between the apartment complex and the fire station.

Larson agreed that right-in right-out fits better on 27th than Old Cheney.

Motion to approve a change of zone to O-2 Suburban Office District carried 5-3: Cornelius, Taylor, Strand, Larson and Carlson voting 'yes'; Carroll, Sunderman and Krieser voting 'no'; Esseks absent. This is a recommendation to the City Council.

COUNTY CHANGE OF ZONE NO. 06003
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL
and
COUNTY PRELIMINARY PLAT NO. 06006,
PONDEROCA CROSSING,
ON PROPERTY GENERALLY LOCATED
AT THE NORTHWEST CORNER OF
S. 38TH STREET AND MARTELL ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: June 21, 2006

Members present: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson; Esseks absent.

Staff recommendation: Revised to approval on the change of zone and conditional approval on the preliminary plat based on approval by the Village of Roca.

Ex Parte Communications: None

Staff presentation: Mike DeKalb of Planning staff pointed out that the Planning Commission had deferred these applications two weeks ago to allow action by the Village of Roca. The staff recommendation had been denial based on the Comprehensive Plan. Yesterday, he was advised that the Village Board of Roca voted 6-0 to support the change of zone and preliminary plat. Therefore, the staff recommendation is revised to approval.

Proponents

1. Mike Eckert of Civil Design Group also advised that the Roca Board has approved this proposal with an additional note on the preliminary plat concerning control of noxious weeds on the outlot in their jurisdiction.

There was no testimony in opposition.

COUNTY CHANGE OF ZONE NO. 06003
ACTION BY PLANNING COMMISSION:

June 21, 2006

Strand moved approval, seconded by Sunderman and carried 8-0: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson voting 'yes'; Esseks absent. This is a recommendation to the Lancaster County Board.

COUNTY PRELIMINARY PLAT NO. 06006
ACTION BY PLANNING COMMISSION:

June 21, 2006

Strand moved to approve the revised staff recommendation of conditional approval, seconded by Sunderman and carried 8-0: Cornelius, Taylor, Strand, Larson, Carroll,

Sunderman, Krieser and Carlson voting 'yes'; Esseks absent. This is a recommendation to the Lancaster County Board.

There being no further business, the meeting was adjourned at 5:10 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on July 5, 2006.

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